



## **NUCLEAR REGULATORY COMMISSION**

**[Docket No. 50-201; NRC-2020-0086]**

**New York State Energy Research and Development Authority**

**Irradiated Nuclear Fuel Processing Plant**

**Western New York State Nuclear Service Center**

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** License amendment request; opportunity to comment, request a hearing, and petition for leave to intervene.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an amendment to Facility Provisional Operating License No. CSF-1 for provisional operation of the Irradiated Nuclear Fuel Processing Plant located at the Western New York Nuclear Service Center (WNYNSC), in Cattaraugus and Erie Counties, New York. The proposed amendment would amend the Radiation Protection Plan for the “retained premises of the licensed area” for modernization. In addition, the New York State Energy Research and Development Authority (NYSERDA), the licensee, requested that the license be amended to clarify NYSERDA’s health and safety and other responsibilities under the license. NYSERDA defines the “retained premises of the licensed area” as the area consisting of the WNYNSC, not including the U.S. Department of Energy (DOE) West Valley Demonstration Project (WVDP) premises and the State Licensed Disposal Area (SDA).

**DATES:** Submit comments by **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**. Requests for a hearing or petition for leave to intervene must be filed by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**.

**ADDRESSES:** You may submit comments by any of the following methods; however, the NRC encourages electronic comment submission through the **Federal Rulemaking**

**Web Site:**

- **Federal Rulemaking Web Site:** Go to <https://www.regulations.gov> and search for Docket ID **NRC-2020-0086**. Address questions about Docket IDs in Regulations.gov to Stacy Schumann; telephone: 301-415-0624; e-mail: Stacy.Schumann@nrc.gov. For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

- **Mail comments to:** Office of Administration, Mail Stop: TWFN-7-A60M, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, ATTN: Program Management, Announcements and Editing Staff.

For additional direction on obtaining information and submitting comments, see “Obtaining Information and Submitting Comments” in the SUPPLEMENTARY INFORMATION section of this document.

**FOR FURTHER INFORMATION CONTACT:** Marlayna V. Doell, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: 301-415-3178, e-mail: Marlayna.Doell@nrc.gov.

**SUPPLEMENTARY INFORMATION:****I. Obtaining Information and Submitting Comments****A. Obtaining Information**

Please refer to Docket ID **NRC-2020-0086** when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

- **Federal Rulemaking Web Site:** Go to <https://www.regulations.gov> and search for Docket ID **NRC-2020-0086**.

- **NRC’s Agencywide Documents Access and Management System (ADAMS):** You may obtain publicly available documents online in the ADAMS Public Documents collection at <https://www.nrc.gov/reading-rm/adams.html>. To begin the search, select “Begin Web-based ADAMS Search.” For problems with ADAMS, please contact the NRC’s Public Document Room (PDR) reference staff at 1-800-397-4209,

301-415-4737, or by e-mail to [pdr.resource@nrc.gov](mailto:pdr.resource@nrc.gov). The “Resubmittal of Request for License Amendment: Retained Premises Radiation Protection Requirements,” is available in ADAMS under Accession No. ML20076C310. The supplemental information from the licensee is available in ADAMS under Accession No. ML20311A200. A public version of the CSF-1 Provisional Operating License and associated Technical Specifications is available in ADAMS under Package Accession No. ML21042A945.

#### B. Submitting Comments

The NRC encourages electronic comment submission through the **Federal Rulemaking Web Site** (<https://www.regulations.gov>). Please include Docket ID **NRC-2020-0086**, in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at <https://www.regulations.gov> as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

## II. Introduction

The NRC is considering issuance of an amendment to NYSERDA’s Facility Provisional Operating License No. CSF-1 for provisional operation of the Irradiated Nuclear Fuel Processing Plant, located at the WNYNSC in Cattaraugus and Erie Counties, New York. Although portions of the site are actively being decommissioned by DOE under the West Valley Demonstration Project Act, 42 U.S.C. § 2021a note, Pub. L.

No. 96-868, 94 Stat. 1347 (1980) (WVDPA), NYSERDA retains responsibility for portions of the site known as the “retained premises.”

The proposed amendment would amend the Radiation Protection Plan for the “retained premises of the licensed area” for modernization and would clarify NYSERDA’s health and safety and other responsibilities under the license.

Before issuance of the proposed license amendment, the NRC will need to make the findings required by the Atomic Energy Act of 1954, as amended (the Act), and the applicable NRC regulations.

The NRC has made a proposed determination that the license amendment request involves no significant hazards consideration. Under the NRC’s regulations in § 50.92 of title 10 of the *Code of Federal Regulations* (10 CFR), this means that provisional operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The changes proposed in this license amendment involve the addition of license conditions to provide additional clarity on NYSERDA’s authorities and responsibilities for health and safety of the facility under the license and replace existing radiation protection requirements in the license pertaining to the non-SDA, non- WVDP portions of the WNYNSC (the Retained Premises) where Part 50-Licensed radioactive materials are or may be present. There are no proposed changes to structures, systems, and components (SSCs) of the plant. There are no changes to any of the previously evaluated accidents in the final safety analysis report (FSAR). There are no changes to operating procedures or administrative controls that are credited as having the function of preventing or mitigating any accidents. Furthermore, there are no accidents previously evaluated involving the Retained Premises. In view of the foregoing and because the proposed license amendment would simply impose an upgraded and up-to-date radiation protection plan that is in compliance with the current 10 CFR Part 20 and replace and supersede the outdated radiation protection requirements developed at the time of licensing the irradiated

fuel processing facility, the proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The changes proposed in this license amendment involve the addition of license conditions to provide additional clarity on NYSERDA's authorities and responsibilities for health and safety of the facility under the license and replace existing radiation protection requirements in the license pertaining to the Retained Premises where Part 50-Licensed radioactive materials are or may be present. The proposed changes do not change the design function, or operation of any SSC described in the FSAR. The proposed changes do not create the possibility of a new or different kind of accident due to credible new failure mechanisms, malfunctions, or accident initiators not considered in the design and licensing bases. Furthermore, there are no accidents previously evaluated involving the Retained Premises portion of the WNYNSC. Thus, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The changes proposed in this license amendment involve the addition of license conditions to provide additional clarity on NYSERDA's authorities and responsibilities for health and safety of the facility under the license and replace existing radiation protection requirements in the license pertaining to the Retained Premises where Part 50-Licensed radioactive materials are or may be present. There are no safety margins that are used to demonstrate compliance with regulatory and licensing requirements described in the FSAR that apply to activities planned to be performed in the Retained Premises and the proposed license amendment would simply impose an upgraded and up-to-date radiation protection plan for the Retained Premises that is in compliance with the current 10 CFR Part 20 and replace and supersede the outdated radiation protection requirements developed at the time of licensing the irradiated fuel processing facility. Thus, no safety margins are affected by the proposed changes and there is no significant reduction in any margin of safety previously identified in the license.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the license amendment request involves a no significant hazards consideration.

The NRC is seeking public comments on this proposed determination that the license amendment request involves no significant hazards consideration. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the proposed license amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day notice period if the Commission concludes the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period if circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example, in prevention of decommissioning of the facility under the WVDPA. If the Commission takes action prior to the expiration of either the comment period or the notice period, it will publish in the *Federal Register* a notice of issuance. If the Commission makes a final no significant hazards consideration determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

### **III. Opportunity to Request a Hearing and Petition for Leave to Intervene**

Within 60 days after the date of publication of this notice, any persons (petitioner) whose interest may be affected by this action may file a request for a hearing and petition for leave to intervene (petition) with respect to the action. Petitions shall be filed in accordance with the Commission's "Agency Rules of Practice and Procedure" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.309. The NRC's regulations are accessible electronically from the NRC Library on the NRC's Web site at <https://www.nrc.gov/reading-rm/doc-collections/cfr/>. If a petition is filed, the Commission or a presiding officer will rule on the petition and, if appropriate, a notice of a hearing will be issued.

As required by 10 CFR 2.309(d) the petition should specifically explain the reasons why intervention should be permitted with particular reference to the following

general requirements for standing: (1) the name, address, and telephone number of the petitioner; (2) the nature of the petitioner's right to be made a party to the proceeding; (3) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the petitioner's interest.

In accordance with 10 CFR 2.309(f), the petition must also set forth the specific contentions which the petitioner seeks to have litigated in the proceeding. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner must provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to the specific sources and documents on which the petitioner intends to rely to support its position on the issue. The petition must include sufficient information to show that a genuine dispute exists with the applicant or licensee on a material issue of law or fact. Contentions must be limited to matters within the scope of the proceeding. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to satisfy the requirements at 10 CFR 2.309(f) with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene. Parties have the opportunity to participate fully in the conduct of the hearing with respect to resolution of that party's admitted contentions, including the opportunity to present evidence, consistent with the NRC's regulations, policies, and procedures.

Petitions must be filed no later than 60 days from the date of publication of this notice. Petitions and motions for leave to file new or amended contentions that are filed after the deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the three factors in

10 CFR 2.309(c)(1)(i) through (iii). The petition must be filed in accordance with the filing instructions in the “Electronic Submissions (E-Filing)” section of this document.

If a hearing is requested, and the Commission has not made a final determination on the issue of no significant hazards consideration, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to establish when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, then any hearing held would take place before the issuance of the amendment unless the Commission finds an imminent danger to the health or safety of the public, in which case it will issue an appropriate order or rule under 10 CFR Part 2.

A State, local governmental body, Federally-recognized Indian Tribe, or agency thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(h)(1). The petition should state the nature and extent of the petitioner’s interest in the proceeding. The petition should be submitted to the Commission no later than 60 days from the date of publication of this notice. The petition must be filed in accordance with the filing instructions in the “Electronic Submissions (E-Filing)” section of this document, and should meet the requirements for petitions set forth in this section, except that under 10 CFR 2.309(h)(2) a State, local governmental body, or Federally-recognized Indian Tribe, or agency thereof does not need to address the standing requirements in 10 CFR 2.309(d) if the facility is located within its boundaries. Alternatively, a State, local governmental body, Federally-recognized Indian Tribe, or agency thereof may participate as a non-party under 10 CFR 2.315(c).

If a hearing is granted, any person who is not a party to the proceeding and is not affiliated with or represented by a party may, at the discretion of the presiding officer, be



permitted to make a limited appearance pursuant to the provisions of 10 CFR 2.315(a). A person making a limited appearance may make an oral or written statement of his or her position on the issues but may not otherwise participate in the proceeding. A limited appearance may be made at any session of the hearing or at any prehearing conference, subject to the limits and conditions as may be imposed by the presiding officer. Details regarding the opportunity to make a limited appearance will be provided by the presiding officer if such sessions are scheduled.

#### **IV. Electronic Submissions (E-Filing)**

All documents filed in NRC adjudicatory proceedings, including a request for hearing and petition for leave to intervene (petition), any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities that request to participate under 10 CFR 2.315(c), must be filed in accordance with the NRC's E-Filing rule (72 FR 49139; August 28, 2007, as amended at 77 FR 46562; August 3, 2012). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Detailed guidance on making electronic submissions may be found in the Guidance for Electronic Submissions to the NRC and on the NRC Web site at <https://www.nrc.gov/site-help/e-submittals.html>. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by e-mail at [hearing.docket@nrc.gov](mailto:hearing.docket@nrc.gov), or by telephone at 301-415-1677, to (1) request a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign submissions and access the E-Filing system for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a petition or other adjudicatory document (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID

certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public Web site at <https://www.nrc.gov/site-help/e-submittals/getting-started.html>. Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit adjudicatory documents. Submissions must be in Portable Document Format (PDF). Additional guidance on PDF submissions is available on the NRC's public Web site at <https://www.nrc.gov/site-help/electronic-sub-ref-mat.html>. A filing is considered complete at the time the document is submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The E-Filing system also distributes an e-mail notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before adjudicatory documents are filed so that they can obtain access to the documents via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC's Electronic Filing Help Desk through the "Contact Us" link located on the NRC's public Web site at <https://www.nrc.gov/site-help/e-submittals.html>, by e-mail to [MSHD.Resource@nrc.gov](mailto:MSHD.Resource@nrc.gov), or by a toll-free call at 1-866-672-7640. The NRC Electronic Filing Help Desk is available between 9 a.m. and 6 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing stating why there is good cause for not filing electronically and requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) first class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing adjudicatory documents in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at <https://adams.nrc.gov/ehd>, unless excluded pursuant to an order of the Commission or the presiding officer. If you do not have an NRC-issued digital ID certificate as described above, click "cancel" when the link requests certificates and you will be automatically directed to the NRC's electronic hearing dockets where you will be able to access any publicly available documents in a particular hearing docket. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or personal phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. For example, in some instances, individuals provide home addresses in order to demonstrate proximity to a facility or site. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory

filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

For further details with respect to this action, see the application for license amendment dated February 6, 2020, as supplemented on March 11, 2020, and October 28, 2020 (ADAMS Accession Nos. ML20042D497, ML20076C310, and ML20311A200, respectively).

*Attorney for licensee:* Ms. Janice Dean, Deputy Counsel, New York State Energy Research and Development Authority, 9030B Route 219, West Valley, NY 14171-9500.

*NRC Branch Chief:* Bruce A. Watson, CHP.

Dated: March 5, 2021.

For the Nuclear Regulatory Commission.

Bruce A. Watson, Chief,  
Reactor Decommissioning Branch,  
Decommissioning, Uranium Recovery  
and Waste Programs,  
Office of Nuclear Material Safety and  
Safeguards.

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